MANASSEH v. THE ATTORNEY-GENERAL AND MUSTAPHA BIN AHMAD .... THIRD PARTY.

[Orig. Civ. Juris. (Jobling, J.) October 20, 1949]

[Penang — Crown Suit No. 1 of 1949]

Negligence — General and special damages against a servant of the Crown — Quantum of damages.

In this case the plaintiff's claim was for general and special damages in respect of injuries alleged to have been caused by the negligence of a servant of the Crown. The defendant denied the allegation and claimed that the injuries were caused by the negligent act of the third party.

The plaintiff's (a student) case was that on 16th April, 1948 at about 11 a.m. he was proceeding on his bicycle at about 5 or 6 m.p.h. along Kelawei Road towards Bagan Jermal on his proper side and close to the curb when he was knocked down by a Police Constable on a motor cycle who came at considerable speed from the opposite direction. He lost consciousness and did not regain it until he was in hospital. His principal injuries were a broken wrist and a broken leg. He remained in hospital until 22nd May, 1948 and after discharge visited it periodically for treatment until 13th November, 1948.

Held, on the evidence that the cause of the injury to the plaintiff was **firstly**, the negligent act of Police Constable 7789 in rounding a bend in the road at a speed which deprived him of proper control of his vehicle and **secondly**, the negligent act of the Third Party in driving his motor car partly on the wrong side of the road at a bend therein.

CROWN SUIT.

T. E. Conaghan for the Plaintiff.

C. Wylie (Federal Counsel) for the Defendant.

F. G. Pooley for the Third Party.

Jobling, J. : — After giving the facts as stated in the Head Notes and reviewing the evidence his Lordship concluded: "I find therefore that the cause of the injury to the Plaintiff was *first*, the negligent act of P.C. 7789 in rounding a bend in the road at a speed which deprived him of proper control of his vehicle and *secondly*, the negligent act of the Third Party in driving his motor car partly on the wrong side of the road at a bend therein. I find that it was the coincidence of these two negligent acts that resulted in injury to the Plaintiff and that both the Defendant and the Third Party are equally responsible for it.

"The special damages incurred have been agreed at $1,312.00 and there is only the question of general damages to be decided.

"The Plaintiff suffered a fracture of the right leg and wrist and it was not until 1st October, 1948, a period of 5½ months, that he was able to resume his studies at school. He has suffered considerable pain and discomfort over a long period and that pain has not yet entirely disappeared. The medical evidence shows that Plaintiff has completely recovered except for occasional pain and a slight limitation of the dorsiflection of the right foot and that the former will disappear but the latter will probably be permanent.

"The grounds for general damages are, therefore, the pain and discomfort suffered, the loss of 5½ months schooling and the slight permanent disability. After consideration of these matters and taking into account Plaintiff's youth and circumstances I award $1,250.00 as general damages.

"Judgment will, therefore, be entered for the Plaintiff for $1,312.00 special damages and $1,250.00 general damages and costs against the Defendant and for the Defendant against the Third Party of half those general and special damages and half those costs with half such costs as are attributable to the Third Party proceedings."

Judgment Accordingly.

PUBLIC PROSECUTOR v. SOH TUAN CHEUNG & 2 ORS.

[App. Cr. Juris. (Taylor, J.) September 30, 1949]

[K.L. — Cr. App. from Sessions Court No. 32 of 1949]

Customs Enactment, 1936 — Joint possession of a quantity of uncustomed goods.

In this case the three accused were charged with knowingly being in possession of a commercial quantity of uncustomed cigarettes which were found in a lorry driven by the second accused, the other two being also in the lorry. Evidence of a statement made by one of them to a Customs Officer was tendered by the prosecution but rejected by the learned President of the Sessions Court. At the close of the case for the prosecution all three accused were acquitted on the ground that they were not proved to have been in possession.

The Public Prosecutor appealed on the grounds:— (a) that the evidence mentioned was wrongly rejected; (b) that there was evidence of possession which, if unrebutted, would have warranted a conviction.

Held, that it is no doubt correct that when the evidence points to only one of the several accused being guilty and the circumstances do not implicate one rather than another the Court will be left in doubt and therefore should acquit them all (even though convinced that one or other of them must be guilty), but when, the evidence points to a joint enterprise the Court ought to consider whether a **prima facie** case of joint possession is made out and if so should call on the accused for their defence. It is still open to the accused to shew that the possession was not joint.

CRIMINAL APPEAL.

H. Shepherd (D. P. P.) for the Appellant.

R. H. V. Rintoul for the First Respondent.

Second and Third Respondents in person.

Cur. Adv. Vult.